

STATE OF MICHIGAN  
COURT OF APPEALS

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KISHA VAN BUREN, Individually, and as  
Personal Representative of the Estate of IZEAIR  
KENDALL BELL, Deceased,

UNPUBLISHED  
January 31, 2006

Plaintiff-Appellee,

v

PANTHER CRANKSHAFTS,

No. 255675  
Oakland Circuit Court  
LC No. 2003-052257-NO

Defendant-Appellant.

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Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff, Kisha Van Buren, on behalf of herself and the estate of her deceased child, Izeair Kendall Bell, brought this action against defendant, Panther Crankshafts, her employer alleging that she and Izeair were injured when she fell at work. Defendant moved for summary disposition on the grounds that plaintiff's and the estate's claims were barred by the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.131 and that plaintiff had not yet been appointed as the personal representative of the estate when she filed her amended complaint. The trial court ruled that plaintiff's individual claim was barred by the WDCA, but the estate's claim was not. The trial court also ruled that plaintiff could proceed with the action despite her initial failure to be appointed personal representative. Defendant now appeals the trial court's rulings with respect to the estate's claim. We reverse in part and affirm in part, but remand to afford plaintiff an opportunity to amend her complaint. MCR 2.118(A)(2).

Defendant contends that the trial court erred in refusing to dismiss the estate's claim on the basis that it was barred by the exclusive remedy provision of the WDCA, MCL 418.131. We agree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "A motion for summary disposition under MCR 2.116(C)(8) relies on the pleadings alone, and all well-pleaded factual allegations in a complaint are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations." *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). The motion should be granted if the claim is so clearly unenforceable as a matter of law that no factual development could justify recovery. *Id.*

MCL 418.131 provides as follows:

(1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. . . .

(2) As used in this section and section 827 [MCL 418.827], "employee" includes the person injured, his or her personal representatives, *and any other person to whom a claim accrues by reason of the injury to, or death of, the employee*, . . . . [Emphasis added.]

In *Hesse v Ashland Oil, Inc*, 466 Mich 21, 25; 642 NW2d 330 (2002), our Supreme Court held that the plaintiffs' claim for negligent infliction of emotional distress arising from having witnessed their son die in a work-related fire was barred by MCL 418.131. The Court stated:

The Court of Appeals held that the claim for negligent infliction of emotional distress brought by plaintiffs, even when it concerned a work-related accident, was a separate tort and thus not within the bar of the exclusive remedy provision. The plain language of the statute, however, states that the exclusive remedy for an employee, including "his or her personal representatives, and any other person to whom a claim accrues by reason of the injury to, or death of, the employee," is found in the WDCA. MCL 418.131(2).

This provision is dispositive of this case. Here, the plaintiffs' claim has accrued by reason of the death of an employee of the defendant. The plaintiff's are within the category of individuals barred from suit, namely, as defined by § 131(2) of the WDCA, "any other person to whom a claim accrues by reason of the . . . death of . . . the employee . . ." Thus, the claim is barred.

In this case, plaintiff alleged in her amended complaint that, while she was at work, she "violently slipped and fell on the floor causing violent pain in her back and uterus." She also alleged that the fall on the floor caused a pre-term delivery of Izeair. She further alleged:

13. That *the Plaintiff's fall on the floor caused* a pre-termed [sic] delivery of her child, IZEAIR KENDALL BELL.

14. That *as a result of the Plaintiff's fall* and her pre-termed [sic] delivery, Plaintiff's child, IZEAIR KENDALL BELL, has sustained serious injuries and has had constant hospitalization with severe and permanent physical injuries.

\* \* \*

16. As a direct and proximate result of the wrongful acts and omissions of Defendant, PANTHER CRANKSHAFTS, the Plaintiff, IZEAIR KENDALL BELL was severely injured and said injuries caused his death on or about August 10, 2003. [Emphasis added.]

As pleaded, plaintiff's complaint falls within the scope of the WDCA. Plaintiff alleged that her fall at work caused her injuries that caused pre-term labor that caused Izeair's injuries and subsequent death. Thus, plaintiff alleged that Izeair's estate accrued a claim by reason of the injury to plaintiff, the employee. We are constrained by the language used in plaintiff's amended complaint to conclude that her claim, as alleged, falls within the WDCA. Therefore, we reverse the trial court's denial of defendant's motion for summary disposition of the estate's claim, but we remand to afford plaintiff an opportunity to amend her complaint to allege a theory that does not fall within the WDCA.

Defendant also argues that the trial court erred by denying its motion for summary disposition under MCR 2.116(C)(5) or (7), in which defendant argued that plaintiff lacked the legal capacity to bring this action because, when she filed her amended complaint, she had not yet been appointed personal representative of the estate. We disagree.

The parties agree that plaintiff amended her complaint to add the wrongful death claim before she was appointed personal representative of the estate. The trial court allowed plaintiff to amend her complaint because there was no dispute that plaintiff was subsequently appointed personal representative. As explained in *Warren v Howlett*, 148 Mich App 417, 422-423; 383 NW2d 636 (1986), a party may be allowed to amend a complaint under MCR 2.118 when there is a change in the party's status, if the party had an interest in the action before the change in the party's status occurred. Because plaintiff had an interest in this matter before she was appointed the personal representative of the estate, the trial court did not err in refusing to dismiss this matter rather than requiring plaintiff to refile it.

Reversed in part and affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly